

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION (STAMP) NO. 35283 OF 2017
IN
WRIT PETITION NO. 465 OF 2009**

Mahesh Maruti Patankar	...Petitioner
Versus	
The State of Maharashtra & Anr.	...Respondents

Ms Mansha Khemka i/b. Khemka & Associates for Petitioner.
Mr. C. P. Yadav – AGP for Respondent – State.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 02 JULY 2018

P.C. :

1] Heard Ms Khemka, the learned counsel for the petitioner and Mr. Yadav – the learned AGP for the respondents – State.

2] The petitioner alleges contempt of judgment and order dated 28th June 2016. Ms Khemka submits that, this Court, had made it clear that neither the appointments nor promotions or seniority of PSIs appointed under category (a) and (b) as referred to in paragraph 3(A) of this order are

intended to be affected by virtue of this order or anything stated in this order. Despite this, Ms Khemka points out that the seniority of the petitioner, who was appointed under categories (a) and (b) as referred to in paragraph 3(A) is sought to be affected and that this therefore constitutes contempt. She further points out that the DGP had been directed to prepare fresh seniority list in accordance with the directions in the judgment and order dated 28th June 2016 and till date, this direction has not been complied with. Ms Khemka submits that such non compliance also constitutes contempt.

3] Mr. Yadav, the learned AGP submits that this contempt petition is barred by the law of limitation and in any case since the state has fully complied with the directions in the judgment and order dated 28th June 2016, there is no contempt committed by any of the respondents. In this regard, he points out paragraph 4 of the affidavit in reply filed on behalf of the respondent no. 2. In particular, he emphasizes on what is set out in paragraphs (4.1) and (4.2).

4] Paragraphs (4.1) and (4.2) of the affidavit in reply filed by the respondent no. 2, read as follows :

*"4.1) In compliance with clauses (D) and (E) of Para no. 10 of the order dated June 28, 2016 issued by the Hon'ble High Court, Mumbai in Writ Petition No. 465 of 2009, the inter-se seniority of the promottees from the Departmental Qualifying Examination held for the year 2000 for promotion to the post of P.S.I. (i.e. those who were declared passed the said examination first) their names were taken first and then the seniority of the candidates, who were declared passed because of the Hon'ble M.A.T.'s order was fixed by issuing order dated 19.09.2016. Hereto annexed and marked as **Exhibit R-1** is the copy of the order issued by this office dated 19.09.2016.*

4.2) The Hon'ble High Court in terms of Clause (F) of para no. 10 of Order of this Hon'ble Court dated 28.6.2016 had fixed a deadline of 20.09.2016 (i.e. 12 weeks from 28.6.2016). This office has fully complied with the order of Hon'ble Court by issuing the inter-se seniority list of promotee quota which was the main subject matter of the petition. It is further submitted that the petitioner probably was expecting to fix the seniority list of all three types of P.S.Is. (Direct, Departmental Direct and promotee) which was done by this office on 12.6.2017. It was done due to the following reasons :-

(i) It is submitted that there was litigation about internal seniority between Promotees from the Departmental Qualifying Examination for the year 2000 and nominees from the Limited Departmental Examination before the Hon'ble M.A.T., Mumbai vide O.A. No. 918 of 2015 filed by Shri Shingte and O.A. No. 1094 of 2015 by Shri Kothalikar. Shri Shingte and Shri Kothalikar and Ors. (i.e. the promottees from the Departmental Qualifying Examination for the year 2000's was the exact subject matter between their inter-se

seniority before Hon'ble High Court, Mumbai in the Writ Petition No. 495 of 2009. The aforesaid Original Applications were finally decided on 7.6.2017 by the Hon'ble M.A.T., Mumbai, in which the order of this office giving seniority to the candidates from the Limited Departmental Examination over the promottees (from the Departmental Qualifying Examination held in the year 2000) was quashed and set aside. Hereto annexed and marked as **Exhibit R-2** is copy of the Order dated 7.6.2017 passed by the Hon'ble M.A.T., Mumbai in O.A. No. 918 and 1094 of 2015 filed by Shri Shingte and Shri Kothalikar.

(ii) It is submitted that then, immediately after the order passed by the Hon'ble M.A.T., Mumbai on 7.6.2017, this office on 12.6.2017 has issued 'provisional seniority list', vide letter dated 12.6.2017. Hereto annexed and marked as **Exhibit R-3** is the copy of the letter dated 12.6.2017. This was also published on the official web site of this office. The issue of inter-seniority between promotes and departmental direct nominee quota was not subject matter of dispute before this Hon'ble Court in W.P. No. 465 of 2009.

(iii) Thus, there has been no willful delay caused by this office to comply the orders of this Hon'ble Court. But if the present Petitioner feels that this office has not complied with the order, it is respectfully submitted that the delay caused because of the litigation pending with the Hon'ble M.A.T., Mumbai. It is again respectfully submitted that it is unintentional and was done in good faith and was also done to avoid duplication of work of publishing of Seniority list several times as it would lead to more chaos and confusion. This fact has also been mentioned in the order dated 19.9.2016. These practical and legal aspects may also kindly be taken into consideration by this Hon'ble Court is the respectful submission of this office."

5] Mr. Yadav submits that the seniority list dated 12th June 2017, is in fact the seniority list in compliance with clause (F) of the judgment and order dated 28th June 2016. He submits that no doubt there was some delay in compliance with this direction. He however submits that the reasons for this delay have been explained in great details in sub clauses (i), (ii) and (iii) of paragraph (4.2) of the affidavit in reply of the respondent No. 2. He submits that this explanation may be accepted and the delay in compliance may kindly be condoned.

6] Ms Khemka however submits that the compliance is not in accordance with the directions in the judgment and order dated 28th June 2016. She submits that the seniority of the petitioner is sought to be affected and further, in preparing the seniority list, the respondents have not taken into consideration the directions issued in the judgment and order dated 28th June 2016.

7] From the averments in the contempt petition and the contentions now raised by Ms Khemka, it appears that the petitioner's grievance is not really with regard to

compliance as such but the real grievance is as regards the legality and validity of the seniority list dated 12th June 2017. Such issues cannot be adjudicated in a contempt petition. No doubt, there was some delay on the part of the respondents in reporting compliances. However, taking into consideration the explanation furnished, we do not regard this as a fit case to invoke our contempt jurisdiction.

8] At the same time, if the petitioner, has any grievance with regard to the letter / order dated 12th June 2017 or for that matter any other issues concerning his seniority, promotion etc. then, it is always open to the petitioner to take out substantive proceedings to seek redressal in that regard. We therefore clarify that although we are not entertaining the present contempt petition, such non entertainment, shall not be construed as any adjudication upon the contentions of the petitioner. The petitioner, is granted liberty to take out substantive proceedings before the appropriate forum and if such proceedings are indeed taken out then all contentions of all parties are specifically kept open.

9] With the aforesaid liberty and clarification, we dispose of the present contempt petition.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA